

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2455 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 176 DB 2017
	:	
v.	:	Attorney Registration No. 43571
	:	
ANDREW WILSON BARBIN,	:	(Cumberland County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 9th day of April, 2018, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Andrew Wilson Barbin is suspended on consent from the Bar of this Commonwealth for a period of one year and one day.

The suspension is stayed in its entirety, and he is placed on probation for a period of one year and one day, subject to the following conditions:

1. Respondent shall continue to maintain the records required by Pa.R.P.C. 1.15(c) for all IOLTA accounts;
2. Respondent shall send those records to the Office of Disciplinary Counsel on a quarterly basis, as follows, by March 30, 2018, June 30, 2018, September 30, 2018, December 30, 2018, and March 30, 2019;
3. Respondent shall select a CPA or other qualified professional, subject to the Office of Disciplinary Counsel's approval, to review Respondent's records and

certify the same for accuracy prior to their submission to the Office of Disciplinary Counsel;

4. Respondent shall comply with any request by the Office of Disciplinary Counsel for corrected or supplemented records within 20 days of his receipt of such request, without the need for the Office of Disciplinary Counsel to issue a subpoena;
5. Respondent shall maintain all of the required books and records provided by Pa.R.P.C. 1.15(c) in electronic form, which shall be securely backed up and readily accessible to Respondent and, upon demand, to the Office of Disciplinary Counsel; and
6. Respondent shall comply with any request by the Office of Disciplinary Counsel for backup records, see Pa.R.P.C. 1.15(c)(3), within 20 days of his receipt of such request, without the need for the Office of Disciplinary Counsel to issue a subpoena.

Respondent's probationary term shall not expire until he has provided the Office of Disciplinary Counsel with the required records, and any requested corrected or supplemented records, and the Office of Disciplinary Counsel has determined that those records are sufficient under Pa.R.P.C. 1.15(c). Any failure by Respondent to comply with the terms of his probation shall result in his immediate transfer to suspended status for the remainder of the one year and one day term, and he shall be required to file a petition and proceed to a hearing prior to any reinstatement. See Pa.R.D.E. 218(a)(1).

It is further ORDERED that Respondent shall pay the costs incurred by the Disciplinary Board in the investigation and prosecution of this matter.

A True Copy Patricia Nicola
As Of 4/9/2018

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. ____ Disciplinary Docket No. 3
Petitioner,	:	
	:	No. 176 DB 2017
v.	:	
	:	Attorney Reg. No. 43571
ANDREW WILSON BARBIN,	:	
Respondent	:	(Cumberland County)

JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT
PURSUANT TO Pa. R.D.E. 215(d)

Petitioner, Office of Disciplinary Counsel (hereafter “ODC”) by Paul J. Killion, Chief Disciplinary Counsel, and Kristin A. Wells, Disciplinary Counsel, and Respondent, Andrew W. Barbin, file this Joint Petition in Support of Discipline on Consent under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter “Pa.R.D.E.”) and in support thereof state:

1. ODC, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, PA 17106, is invested, pursuant to Pa.R.D.E. 207, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Andrew Wilson Barbin, was born on November 26, 1960, and was admitted to practice law in Pennsylvania on October 29, 1985. Respondent is on active status and maintains his office at 5 Kacey Ct, STE 102, Mechanicsburg, PA 17055-9220.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of

FILED
2/5/2018
The Disciplinary Board of the
Supreme Court of Pennsylvania

the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

4. Respondent's misconduct involves his failure to act with reasonable diligence and promptness in representing one client, failure to reasonably consult with one client, mishandling of client funds in multiple matters, failure to maintain records required by RPC 1.15(c), and misrepresentations to the Office of Disciplinary Counsel ("ODC").

5. On or about February 22, 2016, Kathleen Nipple contacted Respondent *via* email seeking representation relative to a potential legal malpractice claim.

6. In or about late-March 2016, Ms. Nipple provided Respondent with documentation in support of her belief that her prior counsel committed malpractice, as well as a check for \$250.00.

6. The funds were to cover an initial face-to-face meeting and Respondent's review of documents provided by Ms. Nipple prior to that meeting.

7. On or about May 6, 2016, Respondent met with Ms. Nipple at his office.

8. Ms. Nipple thereafter decided to retain Respondent's services, for which he required an additional \$2,750.00 retainer fee.

9. On or about July 17, 2016, Ms. Nipple sent Respondent the final retainer fee payment and requested Respondent's conclusions concerning the viability of a malpractice claim.

10. By email dated July 18, 2016, Respondent advised Ms. Nipple that he would provide her with a retainer agreement and his preliminary synopsis of her matter by the end of the week.

11. By email dated July 19, 2016, Respondent advised Ms. Nipple that he received the final retainer payment and stated that he would follow up by Monday the following week.

12. Respondent failed to send Ms. Nipple a retainer agreement or preliminary synopsis of her case.

13. By email dated August 12, 2016, Ms. Nipple provided Respondent with additional facts regarding the underlying matter.

14. Respondent responded by email the same day stating that he would schedule a follow up the following week.

15. On or about October 17, 2016, Ms. Nipple attempted to contact Respondent *via* telephone and left a voicemail requesting a good time to speak with him about her matter.

16. By email dated October 20, 2016, Ms. Nipple again requested Respondent's conclusions regarding the viability of her malpractice claim.

17. Respondent responded to Ms. Nipple's October 17th phone call and October 20th email by email dated October 21, 2016, noting that he had been busy with other cases, but that he should be able to "complete all that [was] necessary for a productive substantive follow-up" with Ms. Nipple the following week.

18. Respondent failed to further communicate with Ms. Nipple or take any action relative to her malpractice claim until *after* he received ODC's DB-7 Request for Statement of Respondent's Position letter ("DB-7 letter") dated March 24, 2017.

19. By letter dated April 5, 2017, sent via email, Respondent provided Ms. Nipple with a synopsis of his opinion regarding the viability of the malpractice claim.

20. In his response dated April 7, 2017, to the DB-7 letter, Respondent, among other things:

- a. acknowledged he failed to adequately communicate with Ms. Nipple;
- b. attached excerpts of emails which stated the basis for his fee; and

c. claimed that he continued to maintain Ms. Nipple's entire fee inviolate in his IOLTA account.

21. Based on this assertion, in or about April 2017, ODC requested from Respondent records required to be maintained by RPC 1.15(c) pertaining to the account in which Ms. Nipple's funds were held.

22. Respondent provided only partial records reflecting his maintenance of client funds.

23. Respondent failed to provide requested individual client ledgers, a general client ledger for his IOLTA account, or monthly reconciliations.

24. Respondent admits that, since the departure of his secretary in or about the fall of 2015 through in or about December 2016, he did not maintain accurate or up-to-date records or timely bill his client for services.

25. Respondent's failure to provide the requested records impeded ODC's audit of Respondent's IOLTA account.

26. ODC's review of the provided records revealed that Respondent failed to account for and maintain entrusted funds as required by the Rules of Professional Conduct and Rules of Disciplinary Enforcement.

27. Over the course of approximately 18 months, from January 2016 through June 2017, Respondent indiscriminately withdrew \$135,446.28 from his IOLTA account in 35 separate transactions for his own use.

28. Specifically, on the following dates, Respondent transferred the listed amounts from his IOLTA account into his operating account:

1. January 28, 2016 - \$8,000.00;
2. February 24, 2016 - \$3,500.00;

3. March 1, 2016 - \$2,500.00 and \$11,500.00;
4. March 9, 2016 - \$1,000.00;
5. March 24, 2016 - \$10,000.00;
6. April 6, 2016 - \$7,000.00;
7. May 13, 2016 - \$3,000.00;
8. May 31, 2016 - \$3,000.00;
9. June 13, 2016 - \$3,000.00;
10. June 16, 2016 - \$3,000.00;
11. June 28, 2016 - \$3,000.00;
12. July 18, 2016 - \$5,000.00;
13. July 19, 2016 - \$2,000.00;
14. July 28, 2016 - \$5,000.00;
15. August 11, 2016 - \$2,000.00;
16. August 16, 2016 - \$4,000.00;
17. August 23, 2016 - \$4,000.00;
18. September 1, 2016 - \$8,000.00;
19. September 7, 2016 - \$2,000.00;
20. September 8, 2016 - \$2,000.00;
21. September 19, 2016 - \$2,196.28;
22. September 26, 2016 - \$4,000.00;
23. October 4, 2016 - \$1,500.00;
24. October 20, 2016 - \$4,000.00;
25. November 1, 2016 - \$4,000.00;
26. December 5, 2016 - \$3,000.00;
27. December 12, 2016 - \$4,000.00;
28. January 24, 2017 - \$1,500.00;
29. February 21, 2017 - \$2,000.00;
30. March 13, 2017 - \$4,000.00;
31. May 15, 2017 - \$2,000.00 and \$3,000.00;
32. May 23, 2017 - \$2,000.00;
33. May 31, 2017 - \$1,375.00;

34. June 1, 2017 - \$1,375.00; and
35. June 15, 2017 - \$3,000.00.

29. Respondent failed to maintain any records regarding these withdrawals, including, payee, date and purpose for each withdrawal, and the client matter to which each withdrawal was attributable.

30. Over the course of approximately 18 months, from October 2015 through April 2017, Respondent deposited and/or maintained in excess of \$90,000.00 of non-client funds in his IOLTA account.

31. These funds consisted of a personal loan, earned fees, and personal money.

32. In or about October 2015, Respondent deposited \$30,000.00 of non-client funds into his IOLTA account.

33. These funds represented a “loan” from Respondent’s family member.

34. Respondent acknowledges that the purpose of the loan was to ensure that he had “sufficient funds to cover escrow obligations” and “to support operational expenses while billing was brought current.”

35. Respondent thereafter remitted a portion of the loan to his family member; the remainder was “forgiven as a gift.”

36. As of January 1, 2016, the balance in Respondent’s IOLTA account was \$17,438.57.

37. Of this amount, only \$3,250.00 was client funds.

38. The remainder was Respondent’s funds and/or earned fees that Respondent had failed to promptly withdraw from the IOLTA account.

39. On the following dates, Respondent transferred the listed amounts from his operating account into his IOLTA account:

1. January 22, 2016 - \$8,000.00;
2. January 3, 2017 - \$2,000.00; and
3. April 17, 2017 - \$1,200.00.

40. These transfers were made for purposes other than the payment of service charges on the IOLTA account.

41. Respondent failed to maintain records for these transfers, including payor, date, and purpose of each transfer.

42. Between February 26, 2016 and June 8, 2017, Respondent deposited fees already earned from various clients into his IOLTA account, further comingling funds in the account.

43. Based on a review of Respondent's records, over the course of at least nine months, from September 2016 through at least June 2017, Respondent has been out of trust as to a minimum of four client matters, as discussed in greater detail below.¹

Kathleen Nipple

44. On May 27, 2016, and July 19, 2016, Respondent deposited funds totaling \$2,750.00 into his IOLTA account.

45. Despite his completion of work on Ms. Nipple's matter over the course of the next year, Respondent failed to promptly withdraw his fees, instead he allegedly maintained the entirety of Ms. Nipple's retainer fee in the IOLTA account.

¹ Due to Respondent's failure to maintain required records, ODC was unable to determine with sufficient accuracy the amount that Respondent was to be holding for other clients during this timeframe; however, it is clear that Respondent was to be holding additional funds for other clients during this time.

Barry Imes

46. Respondent represented Barry Imes relative to a civil litigation matter, docketed at *Barry Imes v. Ben Kratzer d/b/a/ Growmark FS*, Case No. 64-cv-2015 (Juniata C.P.).

47. Mr. Imes paid Respondent a \$2,500.00 retainer fee, which he was to bill against at a rate of \$250.00/hour.

48. On or about August 21, 2017, Respondent issued an invoice for the Imes matter in the amount of \$1,125.00.

49. Respondent failed to thereafter promptly withdraw these earned fees from the IOLTA account.

50. On or about February 8, 2017, Respondent deposited \$14,000.00 into his IOLTA account, which constituted settlement funds from Growmark FS, LLC, for the Imes matter.

51. Thereafter, Respondent was required to hold the aggregate of the above sums inviolate until he made a final disposition and paid Mr. Imes his portion of the settlement account (\$12,638.00) on or about May 17, 2017.

52. Pursuant to the settlement sheet, Respondent was owed \$2,737.00 as attorney fees for this matter at the time of settlement; however, he failed to promptly withdraw his fee from the IOLTA account.

Narehood

53. Respondent represented the Narehood family relative to various matters.

54. In or about June 2016, Nelson and Gary Narehood received checks in the amounts of \$17,814.48 and \$6,558.84, respectively, from Fraley Auction.

55. On July 5, 2016, the Narehood checks were signed over to Respondent and deposited into his IOLTA account pending settlement or other resolution of the matter.

56. Respondent contends that these checks could have been applied to outstanding fees, but that “the negotiation of favorable resolution of the underlying matters was aided by being able to represent the amount remained in escrow.”

57. On April 7, 2017, Respondent deposited \$12,282.01 into his IOLTA account, representing funds that had been held in escrow by another attorney for the Narehood family.

58. On April 24, 2017, Respondent deposited \$125,000.00 from Karla Kramer (previously Narehood) into his IOLTA account, for the Narehood matter.

59. Respondent was required to hold the aggregate of the above amounts inviolate until distribution, which did not occur until May 5, 2017.

60. On or about May 5, 2017, the Narehood matter was settled and Respondent paid \$150,000.00 of the escrowed funds to Trustee, Lawrence Frank.

61. Pursuant to the settlement sheet, Respondent was owed \$7,655.13 as attorney fees for this matter.

62. According to Respondent, this amount constituted a discount of the actual hourly fees owed.

63. Respondent failed to promptly withdraw his fee from the IOLTA account.

64. Following these disbursements, \$4,000.00 remained in escrow for the Narehood matter.

65. On or about June 12, 2017, Respondent issued checks to Nelson and Gary Narehood for \$1,904.25 each.

66. Respondent retained the remaining \$191.50 as his fee.

67. Respondent failed to thereafter promptly withdraw his fee from the IOLTA account.

Deborah Biddle

68. Respondent represented Deborah Biddle relative to an employment matter and various other legal issues.

69. On or about August 16, 2016, Respondent was paid a \$2,750.00 retainer fee for the Biddle representation, which he was to bill against at a rate of \$275.00/hour.

70. On or about March 9, 2017, Respondent deposited \$25,000.00 into his IOLTA account, which consisted of settlement proceeds from Lehigh Anesthesia Associates, PC for the Biddle matter.

71. Respondent was required to hold the aggregate of the above amounts inviolate until distribution, either by drawing down his fees as earned or by remitting the amount owed to his client.

72. On or about April 18, 2017, Respondent disbursed to Ms. Biddle her portion of the settlement proceeds, in the amount of \$21,494.00.

73. Pursuant to the settlement sheet, Respondent was owed \$6,256.00 as attorney fees for this matter.

74. Respondent failed to promptly withdraw his fee from the IOLTA account.

Respondent's IOLTA Account Fell Short of the Required Entrusted Amount

75. As of September 1, 2016, Respondent should have been holding \$31,248.12 in his IOLTA account for clients Imes, Narehood, Nipple, and Biddle; the ending IOLTA account balance on that date was \$29,771.28.

76. Thereafter, through at least in or about June 2017, Respondent's IOLTA account has remained out of trust as to the funds he should have been holding on behalf of clients Imes, Narehood, Nipple, and/or Biddle.

77. As of February 8, 2017, Respondent should have been holding \$45,248.12 in the IOLTA account for clients Imes, Narehood, Nipple, and Biddle; the ending IOLTA account balance on that date was \$38,225.50.

78. As of March 9, 2017, Respondent should have been holding \$70,248.12 in the IOLTA account for clients Imes, Narehood, Nipple, and Biddle; the ending IOLTA account balance on that date was \$61,361.52.

79. As of April 18, 2017, Respondent should have been holding \$61,036.13 in the IOLTA account for clients Imes, Narehood, Nipple, and Biddle; the ending IOLTA account balance on that date was \$49,349.53.

80. As of May 5, 2017, Respondent should have been holding \$36,036.13 in the IOLTA account for clients Imes, Narehood, Nipple, and Biddle; the ending IOLTA account balance on that date was \$26,399.53.

81. Respondent claims that these “paper shortages” were created due to his “deferred invoicing pending determination of equitable adjustments in earned fees,” which resulted in funds having been earned, and withdrawn from the IOLTA account, but not invoiced.

82. Restated, by making regular withdrawals from the IOLTA account Respondent took fees before they were earned, resulting in the shortfall of entrusted funds; Respondent then “accounted” for the shortfall when he distributed client funds by giving a “discount” of his fees.

83. Of course, there was no real discount of fees; this was merely a mechanism by which Respondent performed an erroneous reconciliation of funds.

84. For this reason, Respondent failed to take earned fees at the time they were earned, as to do so would only increase the deficit in his IOLTA account.

85. The audit did not reveal any evidence that clients were not ultimately paid the full amount due; further, clients appeared to have been paid promptly.

SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED

86. By his conduct as alleged in paragraphs 5 through 85, above, Respondent violated the following Rules:

- a. RPC 1.3, which states, “A lawyer shall act with reasonable diligence and promptness in representing a client.”
- b. RPC 1.4(a)(2)-(4), which states, “A lawyer shall ... reasonably consult with the client about the means by which the client’s objectives are to be accomplished; keep the client reasonably informed about the status of the matter; [and] promptly comply with reasonable requests for information[.]”
- c. RPC 1.4(b), which states, “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”
- d. RPC 1.15(b), which states, “A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer’s own property. Such property shall be identified and properly safeguarded.”
- e. RPC 1.15(c), which states, “Required records. Complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the writing required by Rule 1.5(b) (relating to the requirement of a writing communicating the basis or rate of the fee) and the

records identified in Rule 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter). A lawyer shall also maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l):

1. all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks in whatever form, deposited items and records of electronic transactions; and
2. check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements.
3. The records required by this Rule may be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this Rule and that printed copies can be produced. Whatever method is used to maintain required records must have a backup so that the records are secure and always available. If records are kept only in electronic form, then such records shall be backed up on a separate

electronic storage device at least at the end of any day on which entries have been entered into the records. These records shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security or the Office of Disciplinary Counsel in a timely manner upon a request or demand by either agency made pursuant to the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board Rules, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena.

4. A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed. On a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing. A lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with this requirement.”

f. RPC 1.15(e), which states, “Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and

disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.”

- g. RPC 1.15(h), which states, “A lawyer shall not deposit the lawyer’s own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose.”

SPECIFIC JOINT RECOMMENDATIONS FOR DISCIPLINE

Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent is a one year and one day suspension stayed in its entirety with the condition that during the same time period, Respondent must review materials provided by ODC relative to the proper maintenance of his IOLTA account and the records required by RPC 1.15 and supply ODC with his IOLTA account statements and records required to be maintained by RPC 1.15 on a quarterly basis. To the extent that ODC determines that the records provided by Respondent are deficient, Respondent is required to provide amended records. Respondent’s probationary period shall not be deemed to have expired until he has submitted the required records for the one year and one day timeframe. If Respondent fails to provide the required records on a quarterly basis or fails to substitute those records upon request from ODC within a reasonable period of time, he will be deemed in violation of the terms of his probation, immediately transferred to suspended status for the remaining duration of the one year and one day suspension period, and will be required to undergo a disciplinary hearing prior to reinstatement.

There is no *per se* rule for discipline in misappropriation cases, *see Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186, 190 (Pa. 1983), “Precedent has established that unauthorized

dealings with client money requires some form of public discipline due to the breach of trust involved.” *Office of Disciplinary Counsel v. Olshock*, No. 28 DB 2002, D.Bd. Rpt., p. 10 (S. Ct. Order 10/24/03), citing *In re Anonymous No. 124 DB 1997*, 47 Pa. D.&C.4th 338 (1998).

In *Office of Disciplinary Counsel v. Ronald Pollack*, 17 DB 2016, the Court approved consent discipline for a four year suspension, stayed in its entirety, with the imposition of probation with the requirement that the respondent, *inter alia*, send his three way reconciliations to the Office of Disciplinary Counsel on a monthly basis. *Pollack* involved a protracted and complicated audit that revealed Respondent-Pollack was regularly out of trust with respect to entrusted funds. In mitigation, the Respondent-Pollack fully cooperated with ODC’s investigation, expressed sincere remorse, corrected the deficiency during ODC’s audit, began voluntarily providing ODC with monthly reconciliations demonstrating his good faith effort and ability to comply and would have presented mitigating evidence reflecting a protracted period of personal stress.

In *Office of Disciplinary Counsel v. Michael Howard Marks*, No. 80 DB 2015 (S. Ct. Order 7/15/15), the Pennsylvania Supreme Court approved the Disciplinary Board’s recommendation for an 18-month suspension, stayed in its entirety, with Marks placed on probation for a period of 18 months, subject to quarterly reporting requirements. *Marks* involved several IOLTA account overdrafts, deposit of personal funds into the IOLTA account to correct deficiencies, and misappropriation of approximately \$11,000.00. In mitigation, the respondent cooperated fully with ODC’s investigation, expressed sincere remorse, promptly repaid the misappropriation from his personal funds and provided *Braun* mental health evidence.

In *Office of Disciplinary Counsel v. John J. O’Brien, III*, No. 69 DB 2012, the Court approved consent discipline for a one year suspension, stayed in its entirety, with the imposition of probation with the requirement that the respondent, on a quarterly basis, provide the Office of

Disciplinary Counsel with bank statements, including monthly statements of account, deposit slips, and client ledgers, demonstrating the proper maintenance of his IOLTA account. *O'Brien* involved several IOLTA account overdrafts and the repeated misuse of the respondent's IOLTA account by depositing large sums of non-qualified funds into his IOLTA account and payment of various personal and business expenses from that account over the course of approximately four years.

In *Office of Disciplinary Counsel v. Steven M. Stein*, No. 106 DB 2010, the Court approved consent discipline for a one year suspension, stayed in its entirety, with the imposition of probation with the requirement that the respondent provide the Office of Disciplinary Counsel with quarterly reports from his accountant attesting to the proper maintenance of his IOLTA account. *Stein* involved the respondent's failure to place monies in an escrow account, which led to the respondent holding an insufficient balance in the account. In aggravation, the respondent made misrepresentations to ODC in connection with the investigation.

These cases support the discipline sought in this matter. Respondent has been practicing law for 32 years. In or about the fall of 2015, Respondent's long-time secretary left his employ. From that time through the end of 2016, Respondent struggled to handle the business end of his practice. Throughout ODC's investigation, Respondent has maintained that the discrepancies in his IOLTA account were due to his failure to keep appropriate records and were not the result of any intent to convert client funds. Respondent's clients have been promptly paid funds as due. Upon ODC's request, Respondent has provided records for December 2017 reflecting that he is maintaining adequate funds in his IOLTA account. On or about January 24, 2018, Respondent issued a partial refund to Ms. Nipple in the amount of \$1,000.00 in recognition of his failure to promptly handle her matter. By entering into this Joint Petition and acceding to the conditions,

Respondent has expressed recognition of his violations of the Rules of Professional Conduct and understanding of the need for discipline. Respondent has a history of discipline, in that he received an informal admonition in December of 2016. That discipline was predicated upon a defamation case filed against Respondent, which resulted in a jury verdict against Respondent. Respondent noted at the time that he did not appeal the verdict due to the time and expense. That matter did not involve the misuse of client funds.

Respondent hereby consents to the discipline being imposed upon him by this Honorable Board. Attached to this Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), stating that Respondent consents to the recommended discipline and including the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

WHEREFORE, Petitioner and Respondent respectfully request that your Honorable Board:

- (a) Review and approve this Joint Petition and recommend that the Supreme Court of Pennsylvania enter an Order imposing a One Year and One Day Suspension stayed in its entirety with the condition that during the same time period, Respondent must supply ODC with his IOLTA account statements and records required to be maintained by RPC 1.15 on a quarterly basis; and
- (b) Pursuant to Pa.R.D.E. 215(i), enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter.

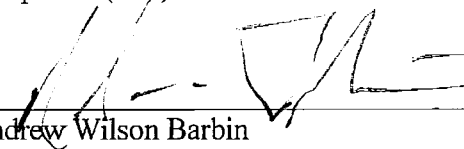
Respectfully submitted,

Date: 5 February 2018

By: Kristin A. Wells
Kristin A. Wells
Disciplinary Counsel
Attorney Registration No. 312080

601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

Date: 2/5/18

By: 

Andrew Wilson Barbin
Respondent
Attorney Registration No. 43571
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Telephone: (717) 506-4670

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. ____ Disciplinary Docket No. 3
Petitioner, :
 :
v. : No. 176 DB 2017
 :
 : Attorney Reg. No. 43571
ANDREW WILSON BARBIN, :
Respondent : (Cumberland County)
 :

VERIFICATION

The statements made in the foregoing Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d) are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

Date: 5 February 2018

By: Kristin A. Wells
Kristin A. Wells
Disciplinary Counsel
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P.O. Box 62675
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Telephone (717) 772-8572

Date: 2/5/18

By: Andrew Wilson Barbin
Andrew Wilson Barbin
Respondent
Attorney Registration No. 43571
5 Kacey Court, Suite 102
Mechanicsburg, PA 17055
Telephone: (717) 506-4670

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. ____ Disciplinary Docket No. 3
Petitioner,	:	
	:	No. 176 DB 2017
v.	:	
	:	Attorney Reg. No. 43571
ANDREW WILSON BARBIN,	:	
Respondent	:	(Cumberland County)
	:	

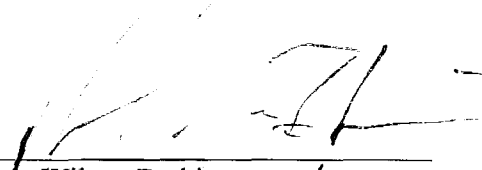
RESPONDENT'S AFFIDAVIT UNDER RULE 215(d) OF THE
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

I, Andrew Wilson Barbin, Respondent in the above-captioned matter, hereby consent to the imposition of a One Year and One Day Suspension stayed in its entirety with the condition that during the same time period, Respondent must review materials provided by ODC relative to the proper maintenance of his IOLTA account and the records required by RPC 1.15 and supply ODC with his IOLTA account statements and records required to be maintained by RPC 1.15 on a quarterly basis, as jointly recommended by the Petitioner, Office of Disciplinary Counsel, and myself, in a Joint Petition in Support of Discipline on Consent and further state:

1. My consent is freely and voluntarily rendered; I am not being subjected to coercion or duress; I am fully aware of the implications of submitting the consent;
2. I am aware there is presently pending a proceeding involving allegations that I have been guilty of misconduct as set forth in the Joint Petition;
3. I acknowledge that the material facts set forth in the Joint Petition are true;
4. I consent because I know that if the charges continued to be prosecuted in the pending proceeding, I could not successfully defend against them; and

5. I acknowledge that I am fully aware of my right to consult and employ counsel to represent me in the instant proceeding.

Date: 2/5/18

By: 

Andrew Wilson Barbin
Respondent
Attorney Registration No. 43571
5 Kacey Court, Suite 102
Mechanicsburg, PA 17055
Telephone: (717) 506-4670

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. ____ Disciplinary Docket No. 3
Petitioner,	:	
	:	No. 176 DB 2017
v.	:	
	:	Attorney Reg. No. 43517
ANDREW WILSON BARBIN,	:	
Respondent	:	(Cumberland County)
	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Pa.R.A.P. 121.

First Class Mail as follows:

Andrew Wilson Barbin
5 Kacey Court, Ste. 102
Mechanicsburg, PA 17055

Date: 5 February 2018

By: Kristin A. Wells
Kristin A. Wells
Disciplinary Counsel
Attorney Registration No. 312080
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. ____ Disciplinary Docket No. 3
Petitioner,	:	
	:	No. 176 DB 2017
v.	:	
	:	Attorney Reg. No. 43517
ANDREW WILSON BARBIN,	:	
Respondent	:	(Cumberland County)
	:	
	:	

ORDER

PER CURIAM

AND NOW, this ____ day of _____, 2018, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Andrew Wilson Barbin is suspended on consent from the Bar of this Commonwealth for a period of one year and one day. The suspension is stayed in its entirety, and he is placed on probation for a period of one year and one day, subject to the following conditions:

1. Respondent shall continue to maintain records required by RPC 1.15(c) for all IOLTA accounts;
2. Respondent shall send those records to the Office of Disciplinary Counsel on a quarterly basis, as follows, by March 30, 2018, June 30, 2018, September 30, 2018, December 30, 2018, and March 30, 2019;
3. Respondent shall select a CPA or other qualified professional, subject to the Office of Disciplinary Counsel's approval, to review Respondent's records and certify the same for accuracy prior to their submission to the Office of Disciplinary Counsel;
4. Respondent shall comply with any request by the Office of Disciplinary Counsel for corrected or supplemented records within 20 days of his receipt of such request, without the need for the Office of Disciplinary Counsel to issue a subpoena;

5. Respondent shall maintain all of the required books and records provided by RPC 1.15(c) in electronic form, which shall be securely backed up and readily accessible to Respondent and, upon demand, to the Office of Disciplinary Counsel; and
6. Respondent shall comply with any request by the Office of Disciplinary Counsel for back-up records supporting his RPC 1.15(c) records within 20 days of his receipt of such request, without the need for the Office of Disciplinary Counsel to issue a subpoena.

Respondent's probationary term shall not be deemed to have expired until he has provided the Office of Disciplinary Counsel with the required five sets of records, and any requested corrected or supplemented records, and the Office of Disciplinary Counsel has determined that those records are sufficient under RPC 1.15(c). Any failure by Respondent to comply with the terms of his probation shall result in his immediate transfer to suspended status for the remainder of the one year and one day term, and he shall be required to undergo a hearing prior to any reinstatement.